

1 UNI TED STATES DI STRI CT COURT  
2 EASTERN DI STRI CT OF NEW YORK

3 - - - - - X  
4 UNI TED STATES OF AMERI CA : CR-08-640  
5 -agai nst- : U. S. Courthouse  
6 ROBERT SI MELS, SHAHEED KHAN : Brooklyn, New York  
7 & ARI ENNE I RVI NG  
8 DEFENDANTS, : November 14, 2008  
9 - - - - - X 10:00 o' cl ock a.m.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRANSCRI PT OF STATUS CONFERENCE  
BEFORE THE HONORABLE JOHN GLEESON  
UNI TED STATES DI STRI CT JUDGE

APPEARANCES:

For the Government: BENTON J. CAMPBELL  
United States Attorney  
147 Pi errepoint Street  
Brookl yn, New York 11201  
BY: STEVEN L. D'ALESSANDRO  
PAUL SCHOEMAN  
Assi stants U.S. Attorney

For the Defendant: GERALD L. SHARGEL, ESQ.  
HENRY MAZUREK, ESQ.  
For Deft Si mel s

STEVEN L. BROUNSTEIN, ESQ.  
For Deft Khan

JAVI ER A. SOLANO, ESQ.  
For Deft I rving

Court Reporter: SHELDON SI LVERMAN  
Official Court Reporter  
225 Cadman Plaza East  
Brookl yn, New York 11201  
(718) 613-2537

Proceedi ngs recorded by mechani cal stenography. Transcri pt  
Produced By Computer Ai ded Transcri ption.

1                   THE CLERK: United States versus Simels, et al.  
2                   (Appearances noted.)

3                   THE COURT: Thank you for these letters in  
4 anticipation of today's appearance. It's very helpful. I  
5 guess we need to set a schedule.

6                   There are a couple of issues that I would like to  
7 address and anything else you want to bring up, you're welcome  
8 to.

9                   MR. BROWNSTEIN: There's one issue regarding  
10 Mr. Khan.

11                  MR. SHARGEL: The broader issue, two issues if I  
12 may?

13                  THE COURT: Yes.

14                  MR. SHARGEL: The first, I think there's reference  
15 to it in our letter, but the first deals with this tension  
16 that exists between Mr. Khan asserting his lawyer-client  
17 privilege through counsel and our need to look at privileged  
18 documents, all documents including privileged documents  
19 accordingly to defend my client. There seems to be somewhat  
20 of a stalemate because we have not, even though discovery has  
21 been provided, we have not looked at the discovery because we  
22 are prohibited from looking at privileged materials.

23 Mr. Simels has looked at the discovery but we have not.

24                  This is a matter that I think has to be dealt with  
25 immediately. We are willing to make a motion, file that

1 motion within ten days of today, perhaps even seven days. Our  
2 motion is not complicated. Then I would imagine not only  
3 would the government weigh in, but there would be a response  
4 by Mr. Khan's counsel. That would need to be resolved in the  
5 first instance. That's number one.

6 THE COURT: Makes sense to me. The question I  
7 have, based on that part of your letter, what relief are you  
8 going to be seeking on that motion?

9 MR. SHARGEL: Both disciplinary rules and the cases  
10 support the proposition an attorney, at least our position, an  
11 attorney is permitted to breach the lawyer-client privilege to  
12 the extent necessary to defend him or herself.

13 THE COURT: I understand.

14 MR. SHARGEL: That's point one.

15 Point two, we have raised an issue with the  
16 government that goes to the basic procedure in connection with  
17 the use of -- they call it the privilege team. We call it the  
18 taint team, but by whatever description.

19 THE COURT: Using the same process for the T3s.  
20 Any objection to that?

21 MR. SCHOEMAN: We can work it out. The  
22 government's concern, we would move quickly, try to move  
23 quickly.

24 THE COURT: We'll talk about the dates for this.  
25 It makes all the sense in the world to me. They've got an

1 opportunity to resolve their disagreements, in this instance  
2 with the T3s, have opportunity to be heard on that. That  
3 makes sense. You want to be heard, I'll listen.

4 MR. D'ALESSANDRO: We've agreed to it.

5 THE COURT: What else?

6 MR. SHARGEL: That's it. This may become part of a  
7 later motion. Apparently, there was a footnote dropped on the  
8 last page of the government's letter that apparently the wall  
9 has decided there are certain parts of the T3 they could look  
10 at, listen to a portion of that if I'm not mistaken. That  
11 doesn't need to be resolved today. I want to call that to  
12 your attention.

13 THE COURT: What significance of what you said  
14 eludes me. What was it you're saying?

15 MR. SHARGEL: Each though we have this procedure in  
16 place, at least as of this moment to have defense counsel  
17 review the materials before they're turned over to the trial  
18 team, that apparently --

19 THE COURT: I've got it. That's water under the  
20 bridge. If you're going to seek relief, you tell me.

21 MR. SHARGEL: Yes, sir.

22 THE COURT: Going forward, we'll have this other  
23 process?

24 MR. SHARGEL: Absolutely.

25 MR. BROWNSTEIN: The difficulty I'm having,

1 Mr. Khan is having, the information, work product of and work  
2 Mr. Simels has done on behalf of Mr. Khan in the underlying  
3 matter, the matter pending before Judge Trizerry, a lot of  
4 that information, it's our position that information is  
5 privileged. We're not willing to share it with anybody. It's  
6 not just with Mr. Shargel and his associate. Our concern is  
7 that exposing some of that information, not just if it's  
8 incriminating but exculpatory, comes before a jury or played  
9 out --

10 THE COURT: Incriminating, exculpatory in what  
11 setting?

12 MR. BROWNSTEIN: For the other case.

13 THE COURT: Your case, in Mr. Khan's case before  
14 Judge Trizerry?

15 MR. BROWNSTEIN: That's correct. We are concerned  
16 exposing that information now and then let's say taking it a  
17 step further, if I were defending Mr. Simels, I would want to  
18 present to the jury, in fact how diligent he was in his  
19 defense of Mr. Khan and how hard he had worked for Mr. Khan.  
20 I would probably expose some of the things I did on behalf of  
21 Mr. Khan in defending him. It kind of lays out a road map of  
22 his defense in the other case, in the case before  
23 Judge Trizerry. That presents us with a very difficult  
24 position.

25 My position, at least at this point, I think things

1 should be held in abeyance until that matter is resolved,  
2 until we know where it's going. He's not going to waive any  
3 privilege at this point in time. I'm not going to say it's  
4 not privilege, can be exposed. Mr. Shargel can then go  
5 forward. I don't see doing that, Judge. I don't see a basis  
6 for doing it.

7 MR. SHARGEL: Could we have the opportunity to put  
8 the basis on paper?

9 THE COURT: I get it. He has important interest in  
10 this other case. I don't know how this gets resolved. That's  
11 why we're going to have motion practice. We'll set a schedule  
12 now. You're free to oppose the relief sought by Mr. Shargel,  
13 to suggest your own relief. If you're going to make a motion  
14 to hold the case in abeyance, brief it, probably argue it and  
15 I'll rule on it. I'm not blind to the fact this is a real  
16 problem. I don't know the answer yet. I'll hear argument.

17 MR. SOLANO: I think it's obvious since my client,  
18 Ms. Irving, is in a similar situation factually as Mr. Simels,  
19 we'll probably be joining with Mr. Shargel in his motion. I  
20 wanted that for the record.

21 THE COURT: Very well.

22 It sounds like the discovery process is going to  
23 take some time. I'm curious in terms of scheduling to hear  
24 from you how much time you think it ought to take or will  
25 take. There's computer files that you want. Do you want me

1 to appoint David Wikstrom or you're agreeing for him to be a  
2 special master.

3 MR. D'ALESSANDRO: We ask for the appointment based  
4 on the parties' discussions who would be someone that is  
5 amenable to the appointment and there's no objection by either  
6 side.

7 THE COURT: When I appoint, that means you guys are  
8 still paying, splitting it?

9 MR. SHARGEL: It would seem to me the split would  
10 include -- Mr. Khan is represented by CJA counsel. It would  
11 seem to me CJA funds would take care of at least a portion of  
12 what Mr. Simels has to pay. In other words, why should  
13 Mr. Simels bear the burden of that expense for every  
14 defendant?

15 THE COURT: I don't know. You can make an  
16 application. I'm sure it's not an issue as to which the  
17 government --

18 MR. D'ALESSANDRO: CJA point. We may have to tee  
19 up sooner. The appointment of Mr. Brounstein was out of  
20 necessity for confluence. We couldn't 475 Mr. Khan for the  
21 day that Ms. Irving and Mr. Simels were arrested. It was out  
22 of the interest of justice he had counsel.

23 We contacted Mr. White who is counsel in the drug  
24 case before Judge Trizerry. His position, he's not entering a  
25 notice of appearance in this case. What we have is

1 Mr. Brounstein's continued appointment pending Mr. Khan  
2 getting new counsel. I don't know what the status is of him  
3 getting new counsel.

4 THE COURT: Have you filled out an affidavit? Is  
5 he eligible?

6 MR. BROWNSTEIN: I'm not sure. Let me give you  
7 what the status is in terms of other counsel.

8 One of the difficulties Mr. Khan has, he is seeking  
9 new counsel. One of the difficulties he's having as a direct  
10 result of this arrest, this case, Mr. Khan was then placed in  
11 the Special Housing Unit in the MCC. His ability to contact  
12 other counsel, to deal with his friends and family in  
13 retaining other counsel has been inhibited by that. That's  
14 slowing down the process as well.

15 THE COURT: Does that mean he's retaining other  
16 counsel?

17 MR. BROWNSTEIN: He's trying to.

18 THE COURT: The intention is to substitute retained  
19 counsel for you?

20 MR. BROWNSTEIN: Yes, that is his intention. He  
21 can't do that or move forward in doing that until -- he's  
22 under extreme -- excuse me, let me speak to him for a second,  
23 Judge.

24 (Pause.)

25 MR. BROWNSTEIN: His positions is at least he

1 intends to retain counsel in the matter before Judge Trizerry.  
2 I'm making an assumption, probably a pretty good assumption,  
3 whatever counsel jumps into that case will probably jump into  
4 this case. I'm not guaranteeing but that's my sense of it.

5 His ability to do that, I think Mr. White addressed  
6 that in a letter to Judge Trizerry as well. He hasn't  
7 retained anybody yet because his ability to do so, besides the  
8 fact he's incarcerated, it makes it much more difficult in the  
9 Special Housing Unit. That's also a problem we're having.

10 THE COURT: You're going to have to attend to that  
11 quickly.

12 MR. BROWNSTEIN: Maybe you could help us. What I'm  
13 asking you to do is to maybe contact the MCC.

14 THE COURT: Okay.

15 MR. BROWNSTEIN: It's to contact the MCC.

16 THE COURT: I don't mean to make light of it.

17 How infrequently is he allowed to use the phone,  
18 have visitors?

19 What's the issue?

20 MR. BROWNSTEIN: One visit a week from his family,  
21 one call every 30 days. One phone call. That's the problem.

22 THE COURT: That's a problem that needs to be  
23 addressed. There are some issues that we really need to  
24 address quickly. One certainly is the extent to which counsel  
25 of Mr. Simels in this case can look at the discovery. I'll be

1 patient with you. At the same time, I'm going to require that  
2 we keep Mr. Brounstein in place -- he's a very able lawyer --  
3 for the time being. We'll place in suspension this whole  
4 issue about eligibility for appointed counsel because I want  
5 this case to proceed as well as it can in the short term but  
6 sooner rather than later.

7 Let's talk now about how we can accommodate your  
8 need to speak to people. What can be done in this regard?  
9 Can we talk to the MCC?

10 MR. D'ALESSANDRO: I've placed a call to legal  
11 counsel at the MCC. I'm trying to get -- I want to know  
12 exactly how to send the disks to the defendant so he has the  
13 opportunity to inspect the evidence.

14 While I'm speaking to counsel, I'll raise the  
15 concerns of the court to assist.

16 THE COURT: Would you convey my strong  
17 encouragement they figure out a way to pull him out so he can  
18 make these arrangements and tell them I'll send them the CJA  
19 bill if it takes more than a week or two?

20 MR. D'ALESSANDRO: I will.

21 So there's context, I'm sure everyone is aware,  
22 Mr. White is retained counsel on the underlying case. I'm  
23 sure he has an interest in making sure cocounsel appears. His  
24 family, obviously, understands the interest of it. He was  
25 arrested back in mid-September. It's not that this is

1 something new that is "but for" his placement in the SHU is  
2 not getting any attention. In spite of that, I'll raise the  
3 issues with legal counsel.

4 THE COURT: Please do. I'm going to return to this  
5 issue about eligibility for appointed counsel. If there's  
6 limited funds -- if you're able to retain a lawyer for this  
7 case, you're not entitled to a court appointed lawyer.

8 Mr. Brounstein is going to stay in place but only temporarily.

9 How did we get off on that tangent?

10 MR. D'ALESSANDRO: Payment of --

11 THE COURT: Mr. Wikstrom, any reason not to appoint  
12 him as special master?

13 MR. SHARGEL: No.

14 THE COURT: I appoint him as special master.

15 How long is it going to take him to extract? He's  
16 just extracting from the computer files Khan case-related  
17 material. Then it goes to the wall AUSA. I don't know how  
18 extensive a process that is. Can you educate me?

19 MR. D'ALESSANDRO: What would happen at this point  
20 with the forensic tool kit, soft carry, do a key word search  
21 to extract data, also using any root directory system.  
22 There's a file folder marked "Khan." All that material would  
23 go to the special master as opposed to the entire computer  
24 where he would have to look through actual data that's there,  
25 data that's been erased, things that are half-finished. I

1 don't know how many computers were taken. I don't know what  
2 the volume of data is going to be. It's very hard for me to  
3 give the court any real guess as to how long it's going to  
4 take. Our intention is by using the DEA's forensic ability is  
5 to whittle down to a manageable amount what the data is. From  
6 there he's going to have to look at it.

7 THE COURT: Who does know this?

8 MR. MAZUREK: Also list him with Mr. Shargel. This  
9 is not information not known. It is the information of a  
10 number of pieces of equipment that were taken as part of the  
11 search warrant inventory, a file server and four hard drives.  
12 Most of the materials are just going to be on the file server,  
13 duplicated on the hard drives, and two laptop computers. It's  
14 a fair amount.

15 The one issue that has not been resolved, that is  
16 all the equipment that was taken have not yet been cloned by  
17 the government. We're still awaiting that, to receive that so  
18 at least from our perspective, for one, the cloned computers  
19 would be helpful to Mr. Simels on his ongoing practice. He's  
20 without all those computer files. We've requested it from the  
21 wall AUSA team. We're still hearing the agents have not had  
22 the opportunity to do that. We're asking that that process be  
23 as expedited as possible, considering there are other clients  
24 Mr. Simels' law firm represents that do not have access to  
25 certain files.

1           With respect to the timing, as I said, six different  
2 machines. There's a considerable amount of material on that.  
3 We don't expect a lot of that material is Khan-related, should  
4 be something that's easy to identify by the special master in  
5 order to make that separation of material.

6           THE COURT: Can you give me a hint? Is it like a  
7 week, a day, a month?

8           MR. MAZUREK: I would say a month, 30 days.

9           THE COURT: There are two meetings that were  
10 subject to Title III surveillance?

11           MR. D'ALESSANDRO: Yes.

12           THE COURT: What's the running time?

13           MR. D'ALESSANDRO: About two hours -- about four  
14 hours total, I believe, on the outside.

15           THE COURT: Is there any reason not to also set a  
16 schedule today for these other motions mentioned in  
17 Mr. Mazurek's letter?

18           MR. BROWNSTEIN: I have one, a personal reason.  
19 I'm scheduled to start trial, going to jury selection process  
20 on Monday in front of Judge Weinstein. I believe we're  
21 beginning testimony December 1st, but selecting the jury,  
22 starting jury selection Monday. I'm sort of, in terms, tied  
23 up for the next approximately 30 days. Then I'm ready,  
24 whatever. That's the only reason I would ask the court to  
25 hold that in abeyance.

1                   THE COURT: That might affect this motion about  
2 the -- we'll come back to that. I'm talking about the motion  
3 to dismiss, severance motion, motion to suppress, audibility.  
4 I think we'll get those on track today, although is the  
5 government going to oppose the severance motion?

6                   MR. SCHOEMAN: Yes.

7                   MR. D'ALESSANDRO: From our perspective --

8                   THE COURT: From the audibility, that wasn't the  
9 thing that struck me as requiring a motion, I thought. If I'm  
10 wrong about this, you'll change my mind, I'm sure, that if on  
11 the tapes -- I mean if nothing can be heard on tapes, that's  
12 one thing. If it's a dispute regarding what's said on the  
13 tapes, my understanding -- I haven't visited this in a few  
14 years -- my understanding the way the circuit says we should  
15 proceed, you each prepare, agree on what everyone in common  
16 believes was said. Then you prepare separate transcripts  
17 reflecting the government's version, the defense version.

18                   MR. SHARGEL: With all due respect, that's  
19 partially right. The threshold question is audibility. We're  
20 at a little bit of a loss here. We haven't listened to the  
21 tapes. I'm going on the basis of the government's claim and  
22 also spoken to my client. My client has listened to the  
23 tapes. I don't have firsthand knowledge of this, but from the  
24 government and from my client, there's a question, a threshold  
25 question of audibility.

1           As I understand the Second Circuit law, is that if  
2 it's so inaudible it would deprive anything heard of  
3 context -- am I making that clear?

4           THE COURT: That's what I was alluding to.

5           MR. SHARGEL: This is not a dispute what's said. I  
6 think we've done that with side-by-side transcripts. We're  
7 not there yet. We don't know --

8           THE COURT: That's not a motion you would make now  
9 anyway?

10           MR. SHARGEL: Sorry.

11           THE COURT: A motion.

12           MR. SHARGEL: A motion?

13           THE COURT: You're reserving the right to make it  
14 later.

15           MR. SHARGEL: When there comes a time, hopefully  
16 not if, but when there comes a time when we can listen and  
17 make a good faith judgment the tape is so inaudible that it  
18 should be inadmissible in all events, that's something that  
19 your Honor would have to think about as a threshold issue.

20           THE COURT: The others we deal with, the dueling  
21 transcripts, in terms of the motions that can be reasonably  
22 scheduled now, that's obviously not one of them, right?

23           MR. SHARGEL: That's probably right.

24           THE COURT: Due process motion to dismiss the  
25 indictment, motion to sever and your motions to suppress,

1 certainly the motions to suppress the search and the T3, no  
2 reason not to get that going.

3 MR. SHARGEL: Correct.

4 MR. D'ALESSANDRO: I don't know, since we all  
5 agree, a threshold issue, I think it's been phrased, this  
6 conflict of privilege which the defendants are suffering from  
7 and getting through the discovery, respectfully, from the  
8 government's perspective, we would prefer holding motion  
9 practice in abeyance, getting those resolved, focusing our  
10 attention on getting all the discovery done so we all know  
11 what the landscape of what's been collected to date. From  
12 that point, we can then divert our attention on to the  
13 motions which need to be made and responded to.

14 MR. SHARGEL: I believe that's right; I agree.  
15 I'll tell you why. There may be things we learn once we can  
16 see the material that we can't see now. If and when that  
17 comes about, that would be part of the motion practice as  
18 you've just described it, motions to suppress, particularly  
19 the due process motion, the first motion. I think we should  
20 do this in two stages, actually, perhaps, three stages. It's  
21 not three stages.

22 Here's what I'm proposing. I'm proposing in a very  
23 short time -- I don't mean to make it more elaborate than it  
24 should be. In the short term, I said seven days before,  
25 perhaps ten days, I'm happy to accommodate Mr. Brounstein's

1   schedule. Actually, I'm starting a trial Monday as well.  
2   Mr. Mazurek is available to do this. In a very short time,  
3   ten days, we should file the motion stating our position and  
4   the case law that supports it in connection with what we'll  
5   call the tension issue. We all know what we're talking about,  
6   dueling interests of assertion of privilege versus need to  
7   break the privilege. So, we could at least get that going.  
8   Mr. Brounstein will answer that motion in accordance with any  
9   schedule that you and he agree to and at the same time the  
10   discovery would be proceeding apace with the special master,  
11   Mr. Wikstrom, working with that material. I think it's a  
12   30-day task. We will also work with the taint team in  
13   connection with other matters in order to complete the  
14   discovery.

15                   Then when that's all done --

16                   THE COURT: Start the second stage.

17                   MR. SHARGEL: Second or third stage, whichever way.  
18   Then we'll schedule the substantive motion.

19                   MR. BROWNSTEIN: The difficulty I have, putting  
20   aside my trial, is that I think if Mr. Khan does retain  
21   counsel, which I said is his intention, I think his retained  
22   counsel should be the party that responds to that very very  
23   important motion that Mr. Shargel is going to make, which  
24   we're going to obviously oppose his request. My suggestion to  
25   the court is what the government suggested; put it over for

1 approximately 30 days.

2 THE COURT: Why shouldn't I regard Mr. White as  
3 available? Aren't the same interests involved in the case  
4 before Judge Iri扎ry? Isn't he going to brief this?

5 MR. BROWNSTEIN: I think Mr. White --

6 MR. SHARGEL: He's present in court.

7 THE COURT: Strikes me that you're here temporarily  
8 and we're going to hold off a motion schedule for a month for  
9 you? No offense.

10 MR. BROWNSTEIN: Not for me. It's more for  
11 Mr. Khan.

12 THE COURT: It's for Mr. Khan, but he's represented  
13 by counsel in the case in which you'll be prejudiced, you say.

14 MR. BROWNSTEIN: I'm not sure what the full status  
15 of his representation by Mr. White is. Mr. White, my  
16 understanding, was sort of retained to represent him as sort  
17 of, if I'm correct, an advisor, not necessarily as lead  
18 counsel. Mr. Simels was lead counsel. Mr. Simels was the  
19 individual who is really guiding the defense.

20 What Mr. Khan is seeking to do, maybe Mr. White will  
21 stick around, I'm not sure, but to retain lead counsel to  
22 guide that defense. Mr. White is not going to be the  
23 individual trying that case and running that. Mr. White is in  
24 the courtroom. If the court wanted to make inquiry, he could  
25 step up.

1                   THE COURT: He's welcome to step up.

2                   Good morning, Mr. White. We've been talking about  
3 you. Everyone knows you're the renowned legal scholar, brief  
4 writer. Maybe I'm incorrectly assuming this need -- your  
5 counsel of record in U.S. versus Khan that exists before  
6 Judge Iri zarry?

7                   MR. WHI TE: I am.

8                   THE COURT: We need to resolve in this case this  
9 tension. You've been sitting here, knowing what we're talking  
10 about, this tension between the obligation on the part of  
11 Mr. Simels' counsel in this case to view the discovery, to  
12 represent him on the one hand and the fact that discovery  
13 contains privileged material as to which Mr. Khan is not  
14 waiving his attorney-client privilege. I think it's right  
15 that's kind of a threshold issue I need to address quickly.

16                   Your client, I'm told, is going to retain separate  
17 counsel; that is, counsel other than Mr. Brounstein who is  
18 appointed under the Criminal Justice Act in this case. Sounds  
19 like counsel in the other case, additional counsel to  
20 substitute for Mr. Simels in the other case may also be  
21 something to think about. I want to resolve this.

22                   My assumption, rightly or wrongly, is even if  
23 Mr. Brounstein is not available, you might be to weigh in on  
24 behalf of Mr. Khan's interest.

25                   MR. WHI TE: There is a conference before

1 Judge Iri zarry on the other case at 4:00 o'clock today. After  
2 this appearance, I'm going to meet with Mr. Khan downstairs  
3 and discuss the very question of his legal representation.

4 I wrote to Judge Iri zarry two weeks ago asking her  
5 to address today the question of his legal representation,  
6 including his representation by me, because whether and when  
7 he's in a position to retain counsel or to continue me as his  
8 retained counsel, is in doubt, your Honor.

9 I've basically been treading water ever since the  
10 Simels case arose what my role in this case is going to be --  
11 not this case, his other case.

12 As luck would have it, I was going to make an  
13 application to be relieved just about that time but in light  
14 of the developments, I held off because I am kind of the only  
15 link with Mr. Khan on that case. I've been appearing but  
16 nothing has been happening on that other case. While Mr. Khan  
17 has explored retaining other counsel, it's a very foggy  
18 situation.

19 THE COURT: Anything scheduled in that case but for  
20 the appearance?

21 MR. WHITE: No, the trial is adjourned without  
22 date. It was supposed to start this Monday, as a matter of  
23 fact. Originally, it's just been -- that case, been put off  
24 for status conference. Nothing else is in the works.

25 THE COURT: Sounds like I shouldn't be relying too

1 much on your assistance in this case in which you haven't even  
2 entered a notice of appearance.

3 MR. WHITE: In this case, that's correct.

4 THE COURT: Thank you.

5 MR. WHITE: That explains a little bit why I didn't  
6 enter a notice of appearance in this case, why I think it's  
7 good to make a note of the fact that there might be an  
8 appearance of conflict. I was cocounsel with Mr. Simels in  
9 the other case, advocate witness rule issue if I needed to be  
10 a witness on one side or the other in this case. It would  
11 have been very awkward in that case to come in here.

12 THE COURT: Understood.

13 MR. WHITE: Thank you.

14 THE COURT: You're it. When are you on trial?

15 MR. BROWNSTEIN: We start jury selection, begins  
16 the 17th, I believe start taking testimony December 1st. I  
17 think the trial is going to last no longer than two weeks.

18 THE COURT: You have plenty of time. You're not  
19 starting until December 1st?

20 MR. BROWNSTEIN: There's 80 tapes.

21 THE COURT: Let's get this motion that's coming,  
22 that you allude to the Sattar case, that motion, let's get it  
23 filed.

24 How about you file, Mr. Shargel, Mr. Mazurek, on  
25 November 25th?

1 MR. MAZUREK: That's fine, yes.

2 THE COURT: Any opposition papers to that motion  
3 will be filed by the following Friday, December 5th. Those  
4 opposition papers, you don't need to oppose his motion and  
5 then make your own. If your opposition papers include an  
6 alternative course of relief, you said you may want to seek to  
7 hold the case in abeyance, you could do that either on the  
8 25th, which is the filing date of the initial motion or in  
9 your opposition to it, Mr. Brounstein, since you're on trial.  
10 Any government response to the submission or submissions on  
11 the 25th will be on December 5th. Everyone will have an  
12 opportunity to make a last hurrah submission on December 10th.

13 Why don't we reconvene on that issue on  
14 December 12th?

15 MR. SHARGEL: Could we do it at an earlier time or  
16 later time? I'm on trial with Judge Block. He's working  
17 Fridays.

18 THE COURT: What's convenient for you?

19 MR. SHARGEL: 4:30 is fine.

20 THE COURT: Is that okay with the government?

21 MR. D'ALESSANDRO: Yes.

22 THE COURT: Okay with counsel for Ms. Irving?

23 MR. SOLANO: Yes.

24 THE COURT: We have that schedule for that motion.

25 MR. SHARGEL: Now that you set the schedule, the

1 only thing I want to say, if it helps Mr. Brounstein, if he's  
2 starting a trial December 1st, starting testimony  
3 December 1st, we're willing to file our motion more quickly so  
4 that his response can get done before December 1st.

5 THE COURT: You want to file it by next Friday?

6 MR. SHARGEL: Yes.

7 MR. BROWNSTEIN: I appreciate that. Thank you.

8 THE COURT: I guess it doesn't sound like anybody  
9 wants me to schedule these other motions?

10 MR. SHARGEL: That's correct.

11 MR. SOLANO: That's correct, your Honor.

12 THE COURT: I guess I won't do that then.

13 Let's set a date we can plan around, five or six  
14 weeks out from the first or second week of the new year to  
15 reconvene on these discovery issues and to set the schedule?  
16 What makes sense, Mr. D'Alessandro, in the government's view?

17 MR. SHARGEL: We'll be here on the 12th.

18 MR. D'ALESSANDRO: That's only going to address the  
19 issue of the tension. Assuming you get an order, you'll then  
20 have the opportunity to inspect the discovery.

21 MR. SHARGEL: Good point.

22 THE COURT: Why don't we come back in that first  
23 full week of January for a status conference?

24 MR. SHARGEL: That's fine.

25 THE CLERK: Friday, January 9th at 10:00 a.m.

1 MR. BROWNSTEIN: A little later?

2 MR. SHARGEL: Could we do 4:30 again? I may still  
3 be on trial.

4 MR. BROWNSTEIN: That's fine.

5 THE COURT: Is that okay with everybody, that date?

6 MR. SCHOEMAN: Yes, Judge.

7 THE COURT: You had something you wanted to raise  
8 about Mr. Khan?

9 MR. BROWNSTEIN: In terms of his situation, his  
10 incarceration.

11 THE COURT: Anything else we should be addressing  
12 today?

13 MR. SHARGEL: No, sir.

14 THE COURT: Anything from the government?

15 MR. SCHOEMAN: We were discussing the speedy trial.

16 THE COURT: Boy, this is a complex case if I ever  
17 saw one. Speak now if you oppose its designation as such.  
18 I'm going to exclude the time between now and our next  
19 appearance.

20 MR. SHARGEL: We have no objection to that finding.

21 THE COURT: On that ground.

22 MR. D'ALESSANDRO: For the record, you previously  
23 designated the case complex at the last status conference.

24 THE COURT: Complex-squared.

25